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STATE OF MARYLAND
OPEN MEETINGS COMPLIANCE
BOARD

19 Official Opinions of the Compliance Board 204 (2025)

July 31, 2025

Keedysville Town Council

The Complainant alleges that the Keedysville Town Council (the “Town Council” or the “Council”) violated the Open Meetings Act (the “Act”) by improperly “meeting” in 2020 via email to discuss the installation of a streetlight. The Town Council asserts that the Act did not apply to the email exchange because, in the Council’s view, the emails did not “constitute the assemblage of a quorum” and, alternatively, the emails entailed the performance of an administrative function that did not trigger the Act’s openness requirements. As we explain below, we conclude that the exchange of emails was a “meeting,” and the discussion therein was not an administrative function. Thus, the Act applied and the convening of a meeting via email, without notice to the public and an opportunity to attend, violated the Act.

Background

The Town Council has five members. *See* Keedysville Town Charter § 5.

At 10:18 p.m. on Monday, March 9, 2020, a member of the Town Council emailed an employee of an electric company about the placement of a streetlight. Copied on the email were the four other members of the Town Council.

At 9:36 a.m., on Tuesday, March 10, 2020, the electric company employee responded, indicating that he would be in the area the following Monday and could stake an approximate location then. Copied on the email were all members of the Council and a Town administration email account. At 11:07 a.m., the Town Administrator responded with a reply-all email from that town account, alerting the electric company employee that the Council member who had initiated the email thread would be out of town and the Town Administrator could meet with the employee when he staked the location of the streetlight. At 1:01 p.m., the employee responded with a reply-all email, indicating that he would be

in the area at 8:30 the following Monday morning. At 1:10 p.m., the Town Administrator responded by reply-all email that he would meet the employee there.

At 7:31 a.m. on Monday, March 16, 2020, the electric company employee emailed the Town Administrator and the member of the Town Council who had first emailed him, indicating that he had staked the location of the streetlight the preceding Thursday. The employee copied the other members of the Town Council on the email.

At 8:31 a.m. Thursday, March 26, 2020, the Town Administrator emailed the electric company employee to ask for an update on the installation of the streetlight. At 8:56 a.m., the employee responded that the project was ready to be scheduled. At 8:57 a.m., the Town Administrator thanked him for the update.

At 6:45 a.m. on Wednesday, April 8, 2020, the electric company employee emailed the Town Administrator to provide another update: The light being installed would not illuminate the entrance to a subdivision, only a street to the south. He presented three different options for how to proceed. At 8:02 a.m., the Town Administrator forwarded this email to all members of the Town Council, with the message, “Thoughts?” At 8:59 a.m., a member of the Town Council replied all, suggesting that the Town proceed with options two and three. At 9:04 a.m., a second member of the Council offered his input by reply-all email. At 9:51 a.m., a third member of the Council sent a reply-all email, indicating that he preferred option two. At 10:30 a.m., a fourth member of the Council sent a reply-all email, agreeing with option two but also suggesting that the Town pursue the third option. At 10:58 a.m. the same Council member who emailed at 8:59 a.m. sent another reply-all email, reiterating his proposed approach.

Discussion

The Complainant asserts that the exchange of emails described above constituted an impermissible “secret” meeting of the Town Council. The Council responds that the emails did not constitute a meeting and, alternatively, the emails entailed the performance of an administrative function that did not trigger the Act’s openness requirements.

As we have previously explained, “the Open Meetings Act applies only when a public body ‘meets,’” 17 *OMCB Opinions* 101, 102 (2023) (some internal quotation marks omitted), which the Act defines to mean “conven[ing] a quorum of a public body to consider or transact public business,” § 3-101(g).¹ A quorum of the five-member Town Council is three. *See* § 3-101(k) (“‘Quorum’ means: (1) a majority of the members of a public body; or (2) the number of members that the law requires.”); Keedysville Town Charter § 11 (providing that a majority of the Town Council constitutes a quorum). Thus,

¹ Statutory references are to the General Provisions Article of the Maryland Annotated Code.

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the question before us is whether, through the exchange of emails described above, three or more members of the Town Council “convene[d] . . . to consider or transact public business.” § 3-101(g).

“We have long interpreted the word ‘convene’ to ‘entail[] the simultaneous presence of a quorum of the public body’s members, whether in person or by telephone,’” 15 *OMCB Opinions* 148, 152 (2021) (quoting 9 *OMCB Opinions* 259, 261-62 (2015), “or by ‘some other means of communication that enables a quorum to address public business contemporaneously,’” 15 *OMCB Opinions* at 152 (quoting 11 *OMCB Opinions* 20, 21 (2017)); see also 13 *OMCB Opinions* 47, 48 (2019) (recognizing that “a ‘meeting’ can occur whether or not the members are physically present in one place” because “a quorum can convene via telephone or electronic communications”). “Thus, even ‘in the absence of a physical meeting consisting of a quorum of a public body’ together in one location, an ‘exchange of emails or other communications . . . might rise to the level of a “meeting” for purposes of the Act.” 15 *OMCB Opinions* at 152 (quoting *Grant v. County Council of Prince George’s County*, 465 Md. 496, 533 (2019)); see also 14 *OMCB Opinions* 33, 35 (2020) (“Email communications among a quorum of a public body can amount to the ‘presence of a quorum’ at a ‘meeting’ that the public is entitled to observe, when those communications are used ‘to consider or transact public business.’”).

“To determine whether a particular exchange of communications rose to the level of a meeting, we have previously referred to the Wisconsin Attorney General’s prediction about factors that courts would likely consider in addressing whether an email exchange was a meeting: ‘(1) the number of participants involved in the communication; (2) the number of communications regarding the subject; (3) a time frame within which the electronic communications occurred; and (4) the extent of the conversation-like interactions reflected in the communications.’” 16 *OMCB Opinions* 212, 214 (2022) (quoting 9 *OMCB Opinions* at 265). “Considering such factors, we have more than once found that the exchange of emails among individual members of a public body rose to the level of a ‘meeting’ for purposes of the Act.” *Id.*; see also 17 *OMCB Opinions* 101, 106 (2023) (finding that a public body “met” when, within one hour, a quorum sent “reply all” emails to all members of the Council about the same topic (a potential budget transfer), which apparently had not been discussed publicly before); 14 *OMCB Opinions* at 37 (concluding that a series of emails on one topic, exchanged among a public body’s members over about fourteen hours, “was so tightly grouped as to amount to a meeting of a quorum”); 13 *OMCB Opinions* 39, 40-41, 44 (2019) (finding that a public body violated the Act when a quorum “considered and decided” via fifteen email messages, including four “demonstrably among a quorum,” over two days “to send letters on behalf of ‘a majority’ of the body”).

“In several other cases, however, we have found that communications among members of a public body did not amount to a ‘meeting’ subject to the Act.” 16 *OMCB*

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Opinions at 214; *see also* 18 *OMCB Opinions* 194, 198 (2024) (finding no “meeting” when a staff person supporting the public body emailed all members of the body, one member of the body responded using the “reply all” function, but none of the other members of the body responded to that “reply all” email and instead responded only to the sender of the original email, other staff members, and to a single member of the body); 13 *OMCB Opinions* at 48 (finding that a public body did not “meet” when the town manager sent an email to the members of the body and each spoke with her, one by one, about the matter, “apparently without any interaction or discussion among themselves”); 11 *OMCB Opinions* at 20-21 (finding that no “meeting” occurred when one member of a public body sent an email to the other members but only one member, recused from the matter, responded); 9 *OMCB Opinions* at 264 (considering it a “close question” but finding no “meeting” for purposes of the Act when four members of a seven-member public body responded by “reply all” emails to a question posed by the body’s attorney when there was no indication that any member read or replied to any other member’s message, “and no one sent a follow-up message to the others that day”).

Here, the Town Council asserts that the emails in question did not “constitute the assemblage of a quorum to address public business.” Regarding the emails exchanged in March 2020, we agree. Although all Council members were copied on most of these emails, only one member—the one who started the email thread—sent any messages in March. But we reach a different conclusion with respect to the emails exchanged on April 8, 2020. On that day, just after 8 a.m., the Town Administrator emailed the entire Town Council to get members’ thoughts about how to proceed with the streetlight project. Over the next three hours, four of the members (a quorum) responded, using reply-all emails. In one message, a member of the Council specifically asked other members to consider his comments on each of three proposals offered by the electric company’s employee. Another Council member’s message responded not to the original query by the Town Administrator (“Thoughts?”) but directly to another Council member’s comment. We think the topic was plainly the public business of the Town Council, which has the authority to regulate Town lighting and public ways. *See* Keedysville Town Charter §§ 22(35), 73, 74; *see also* 15 *OMCB Opinions* at 79, 82 (2021) (noting that “public business” “encompasses those matters over which the public governmental body has supervision, control, jurisdiction or advisory power” (quoting *Kansas City Star Co. v. Fulson*, 859 S.W.2d 934, 940 (Mo. Ct. App. 1993))). Moreover, these emails were “so tightly grouped as to amount to a meeting of a quorum” of the Council. 14 *OMCB Opinions* at 37.

The Town Council also asserts, however, that, the emails involved the performance of an administrative function; thus, the Council asserts, the Act did not apply, regardless of whether the emails constituted a “meeting.” The Town Council is correct that the Act’s openness requirements generally do not apply when a public body is carrying out certain functions, including an administrative function. *See* § 3-301 (“Except as otherwise expressly provided in [the Act], a public body shall meet in open session.”); § 3-103(a)(i)

(providing that the Act “does not apply to . . . a public body when it is carrying out . . . an administrative function”).

The Act defines “administrative function” “by what it is—the ‘administration’ of laws, rules, regulations, or bylaws—and by what it is not—the other functions defined by the Act.” 10 *OMCB Opinions* 12, 15 (2016) (quoting § 3-101(b)). “Thus, to determine whether a particular topic of discussion falls within a public body’s administrative function, we apply a two-step inquiry.” 17 *OMCB Opinions* 83, 87 (2023) (citing 16 *OMCB Opinions* 140, 155 (2022)). “First, the discussion cannot fall within one of the other functions defined by the Act—i.e., it cannot be advisory, judicial, legislative, quasi-judicial, or quasi-legislative in nature.” 19 *OMCB Opinions* 22, 28 (2025); *see also* § 3-101(b)(2) (providing that “administrative function” does not include these other functions); *id.* (c) (defining “administrative function”); *id.* (e) (defining “judicial function”); *id.* (f) (defining “legislative function”); *id.* (i) (defining “quasi-judicial function”); *id.* (j) (defining “quasilegislative function”). If the discussion does fall within one of these functions, the inquiry ends because the discussion necessarily cannot be administrative in nature. 17 *OMCB Opinions* at 48. “If the first part of the inquiry is satisfied, then the second step requires that the discussion involve the administration of an existing law (or laws) that the public body is legally responsible for administering.” 15 *OMCB Opinions* 11, 15 (2021).

Turning to the first step of the analysis, we conclude that, through the exchange of emails, the Council was not performing any non-administrative function defined by the Act. The Town Council was not “study[ing] . . . a matter of public concern” or “making . . . recommendations” on such a matter under a delegation of responsibility by, for example a law or the Governor, which are advisory functions under § 3-101(c) and are usually performed by task forces and commissions appointed to study a particular issue and report back, *see* Office of the Attorney General, *Open Meetings Act Manual* 1-21 (12th ed. Oct. 2023). Nor was the Town Council considering an appointment, a constitutional or charter provision, a law, or any “other measure to set public policy,” all of which are legislative functions under § 3-101(f). The Town Council was also not exercising “power of the Judicial Branch of the State government” (defined as a judicial function under § 3-101(e)), deciding a contested case under the Administrative Procedure Act or a matter before an administrative agency (quasi-judicial functions under § 3-101(i)); or approving, disapproving, or amending a rule, regulation, bylaw, budget, or contract (defined as quasi-legislative functions under § 3-101(j)).

We cannot conclude, however, that the email exchange satisfied the second part of the administrative function test. Based on the record before us, the discussion within the emails did not involve the application of an existing law or policy. 15 *OMCB Opinions* at 15. The Town Council asserts that the Town, through its charter and the Code of Maryland, “is charged with the responsibility of protecting the health, safety, and welfare of its

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residents.” The Council points us to sections 5-202 and 5-203 of the Local Government Article, which authorize a legislative body of a municipality to adopt ordinances to, among other things, “secure persons and property from danger” and “protect the health, comfort, and convenience of . . . residents,” so long as those ordinances do not conflict with State law. Md. Code, Local Gov’t §§ 5-202, 5-203. As already noted, the Town Charter also authorizes the Council to enact ordinances governing lighting, Keedysville Town Charter § 22(35), and to regulate the placement of utility infrastructure with respect to public ways, *id.* § 74(9). The problem, as we see it, is that the Council has pointed us to no such ordinance or regulation that the Council was purportedly applying when its members exchanged the emails on April 8, 2020. For example, in an opinion we issued in February, we found that an exchange of emails among members of the Town Council was an administrative function because the emails involved the application of an ordinance that banned long-term storage of junk vehicles and authorized the Council to enforce this ban. *See* 19 *OMCB Opinions* 22, 23, 29 (2025). Here, by contrast, the Council has invoked enabling statutes but no ordinances, resolutions, or policies adopted pursuant to those enabling statutes that the Council was purportedly applying when its members exchanged the emails on April 8. [W]e have long said that a public body is “not acting in an administrative capacity” when it acts under “a general enabling provision,” absent some other “existing law or policy that the [body] can be said to . . . be[] administering.” 6 *OMCB Opinions* 180, 184 (2009). We thus conclude, on the record before us, that the email exchange here was not an administrative function.

Because the Town Council “met” through the exchange of emails, and those emails did not involve the performance of an administrative function, the meeting was subject to the Act. The failure to conduct that meeting in the open violated the Act. *See* § 3-301.

Conclusion

We conclude that the Town Council convened a meeting when a quorum of the body exchanged five email messages on the same matter of public business in a three-hour period. Because that exchange of emails did not involve the performance of an administrative function, the meeting should have taken place in the open. The Town Council’s failure to conduct the meeting in an open session violated § 3-301.

This Opinion is subject to the acknowledgment and announcement requirements of § 3-211.

Open Meetings Compliance Board

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